Supreme Court, U.S.
FILED
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No. 88-1638

IN THE
Supreme Court of the United States
October Term, 1988

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PG PUBLISHING COMPANY, t/a THE PITTSBURGH POST-GAZETTE, a corporation,

Petitioner,

vs.

RICHARD DISALLE and JOAN DISALLE, his wife,

Respondents.

—o—

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

—o—

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39 pp

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Where Petitioner's false and defamatory article, published with actual malice, was both unfair and inaccurate, and where Petitioner espoused and concurred in the charges against Respondent Richard DiSalle, has not Petitioner failed to present a case to which the neutral reportage doctrine is applicable, even assuming that doctrine has a constitutional basis?

2. Where, in the Pennsylvania courts, Petitioner failed to raise a due process or excessive fines constitutional defense to punitive damages but rather agreed that punitive damages could be awarded on a showing of actual malice and common law malice (outrageous conduct), has not Petitioner waived its right to present such constitutional arguments in this Court?

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COUNTERSTATEMENT OF THE CASE

The trial record demonstrates that Petitioner's high-ranking editorial officials—its managing editor, its city editor and its assistant city editor—conspired to re-write a reporter's first draft of a story about the trial of a will contest so as to defame then Commonwealth Court Judge Richard DiSalle[1] by accusing him of having participated in a scheme to produce a fraudulent will and of having done so because he was engaged in a meretricious relationship with Elizabeth Cowden, the testator's daughter. The will was drafted by DiSalle in 1968 prior to his assuming the bench[2]. The testator, Paul Ciaffoni, died in 1974 and a son, Robert Ciaffoni, became the principal contestant of the will.[3]

The trial record shows that the reporter assigned by Petitioner to write a story about the will contest (the trial

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[1] From the outset DiSalle conceded that he was a public official subject to the actual malice rule, and that he had the burden of proving falsity.

[2] DiSalle, a graduate of the University of Pittsburgh Law School where he was a member of the Law Review, had originally been elected to the Court of Common Pleas of Washington County in 1969. Eight years later, he was elevated by then Governor Milton J. Shapp to an appellate position on the Commonwealth Court. In 1980, he was appointed as an appellate judge on the Superior Court by then Governor Dick Thornburgh. Both appointments were based on Pennsylvania's merit selection process and on both occasions DiSalle was highly rated by the Pennsylvania Bar Association and unanimously confirmed by the Pennsylvania Senate.

[3] The authenticity of the will drafted by Richard DiSalle was most recently upheld by the Pennsylvania Superior Court on April 13, 1989, at No. 393 Pgh. 1988, affirming a decision by a judge of the Court of Common Pleas of Philadelphia County, specially presiding, who held that the will had never been altered. The testator's widow had previously withdrawn her appeal.

of which had taken place six months earlier) wrote a first draft which was non-defamatory. That first draft included the fact that a renowned questioned-document expert and a postal inspector, both engaged by the contestants, had examined the will and concluded that it was authentic. A. 91a; 101-2a. Furthermore, the first draft contained no reference to any improper relationship between Richard DiSalle and Elizabeth Cowden.

The record then shows that the reporter's superiors, principally the managing editor and the assistant city editor, directed the reporter to add to the article a statement excerpted from Robert Ciaffoni's pre-trial deposition, even though they knew that the deposition had never been used or referred to at the trial. This excerpt referred to the alleged meretricious relationship. The reporter's superiors also deleted any reference to the report of the contestants' document examiner and to the conclusion of the postal inspector that there was nothing to question the collective authenticity of the will. A. 7-8a; 108-10a; 112-13a.[4]

The record further shows that Petitioner, through its reporter and through its high-ranking editorial officials, at the time that they wrote and then published the article, actually knew: that Robert Ciaffoni had lied to the re-

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[4] Petitioner claims that the complaint filed by Respondents consisted in material part only of a claim that Petitioner had defamed Judge DiSalle by disseminating Robert Ciaffoni's charges of fraud and an extra-marital relationship with Elizabeth Cowden (Petition, p. 6). To the contrary, Respondents had made not only those allegations but had alleged that Petitioner, although purportedly reporting on a judicial proceeding, had excluded from the article everything that had occurred in the course of the will contest which was favorable to DiSalle. See Complaint in Trespass, App. 1-16.

porter during the course of the reporter's investigation (A. 101a); that Ciaffoni had been referred to as a "liar" by one of the judges who had handled the will contest proceedings (A. 101a); that the reporter considered Ciaffoni's statements to be "rantings and ravings"; that Ciaffoni had no evidence of any improper relationship between DiSalle and Cowden; that Ciaffoni had been "trying to get" DiSalle; that DiSalle had testified at the will contest trial, which took place one year prior to the article's publication, and nothing had been asked of him about any relationship with Cowden, nor was there any effort made by the contestants to prove such a relationship by attempting to admit Ciaffoni's deposition or by having Ciaffoni testify (A. 102a); that the deposition transcript contained statements by Ciaffoni's lawyer that they did not "purport to prove" any allegations regarding any such relationship; and that Ciaffoni himself had stated during the deposition that "I didn't find nothing" and "I don't say that, I don't know that" when questioned further about the alleged relationship (A. 102a).[5]

The record also shows that five months before the article was published DiSalle had been interviewed by

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[5] In the deposition, Robert Ciaffoni also claimed that there was a close relationship between his sister, Elizabeth Cowden, and Patricia McFarlane, his father's secretary who was an attesting witness to the 1968 will. In their appeal from probate, the contestants had alleged that McFarlane was one of the persons, along with DiSalle's secretary, Frances Gray, who were involved with DiSalle and Cowden in creating the false will. Petitioner's reporter, in his first draft, made reference to the allegations against McFarlane and Gray, but this was deleted by the reporter's superiors. In addition, no reference was made in the article to the alleged close relationship between Cowden and McFarlane which appeared in Ciaffoni's deposition. The only statement extracted from the deposition was the reference to the alleged sexual intimacy between DiSalle and Cowden.

Petitioner's state editor who wrote a memorandum to the reporter suggesting that a further investigation be performed, including learning why no attempt was made to prove any accusation against DiSalle during the will contest trial. The state editor's suggestions were ignored. A. 103a. At the time of the interview, DiSalle was a candidate for a full term on the Commonwealth Court but at the time the article was published on September 10, 1979, DiSalle was concluding his appointed term and was not a candidate for office, having been defeated in the May, 1979 primary.[6]

Finally, Respondents proved that Petitioner, both through its reporter and its other high-ranking officials, knew that DiSalle had an excellent reputation, both personal and professional.

At trial, Petitioner did not deny that its article was defamatory, nor did Petitioner attempt to prove that the allegations against Richard DiSalle were true. A. 90a.[7] Although at trial Petitioner raised the actual malice defense of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), subsequent to the verdict Petitioner has not contended, and does not now argue, that the evidence which the jury heard was insufficient to permit a finding that the article was published with knowledge of falsity or with reckless disregard of the truth.

Also at trial, Petitioner never used the term "neutral reportage" in claiming that it was protected by any de-

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[6] Petitioner claims that Judge DiSalle was campaigning for a full term on the court at the time the article was published (Petition, pp. 4-5). This is untrue; DiSalle's primary election loss ended his campaign.

[7] In its post-trial brief in the trial court, Petitioner conceded that Respondents "made a substantial showing . . . that the allegations made by the will contestants were false . . . and that there was no intimate relationship . . ." A.90a.

fenses other than actual malice and fair comment.[8] It did cite to the trial court *Time, Inc. v. Pape,* 401 U.S. 279 (1971), and *Edwards v. National Audubon Society,* 556 F.2d 113 (2d Cir.), *cert. denied* 434 U.S. 1007 (1977), without employing the concept of neutral reportage. Based on those cases, Petitioner requested the trial judge to charge the jury as follows:

> when parties to a Court proceeding . . . make serious charges against a public figure, the First Amendment protects the accurate and disinterested reporting of those charges, regardless of the reporter's private views regarding their validity . . . what is newsworthy about such accusations is that they were made . . . The public interest in being fully informed about controversies that often rage around sensitive issues demands that the press be afforded the freedom to report such charges without assuming responsibility for them.

Respondent's Supplemental Proposed Point for Charge No. 44-A.[9] The trial judge responded by giving a charge which was even more favorable to the Petitioner than the one which it had requested, telling the jury:

> A newspaper is not a guarantor of the truth of the material published. In certain situations, a newspaper

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[8] The thrust of the present petition is that this case was tried as a neutral reportage case, basing that claim on two pages of the trial judge's opinion (Petition, p. 9, fn. 3). Nothing stated on those pages (A. 98-99a) or anywhere else in that opinion supports Petitioner's contention. In fact, Petitioner, at trial, claimed that it did not publish with knowing falsity or reckless disregard (no actual malice) and that the article was the report of a judicial proceeding (common law fair comment). In its post-trial motions, as shown by the opinion of the trial judge (A. 92-110a), Petitioner pursued the same contentions. Only after Petitioner reached the Superior Court did it begin using the phrase "neutral reportage."

[9] This request was consistent with Petitioner's averment in its Answer that the article was a report of a judicial proceeding. App. 17-18.

> is legally permitted to publish false and defamatory statements without legal responsibility to the person who is defamed. In such situations, the newspaper possesses what is referred to as a conditional privilege or a fair comment privilege. This privilege is based upon public policy, namely, the public's right to keep abreast of matters of public concern . . . The publication of a report or a newspaper article about a judicial proceeding is privileged and is immune from legal responsibility to pay damages to the person defamed, although it contains matters which is (sic: "are") false and defamatory . . .[10] A. 104a.

It was only after adverse verdicts were rendered and the trial judge denied the motions for post-trial relief that Petitioner began referring to "neutral reportage". In the Pennsylvania appellate courts, Petitioner took the position that this doctrine permitted anyone to publish a defamatory statement about any public official or public figure so long as the statement was made by someone else, even though the publisher knew that the statement was false or published it with reckless disregard of the truth. As noted *infra*, p. 11, Petitioner has apparently retreated from this position and now acknowledges that a report of a statement made about a public official must be both "accurate and disinterested". As set forth above, this is the instruction that the trial judge, in fact, gave to the jury.

With reference to damages, neither at trial nor on appeal before the Pennsylvania courts did Petitioner claim that punitive damages could not be awarded. In fact, at trial Petitioner specifically asked the judge to charge

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[10] Even if the trial court's charge did not track Petitioner's requested jury instruction verbatim, this was at most harmless error. See, e.g., *Mid-America Food Service, Inc. v. ARA Services, Inc.*, 578 F.2d 691, 701 (8th Cir. 1978).

the jury that "whether to award punitive damages and the determination of the amount are within [your] sound discretion"; and "in determining the amount of punitive damages, as well as in deciding whether they should be awarded at all, [you] can properly consider not merely the act itself but all the circumstances including the motives of the [Defendant], the relations between the parties and the provocation or want of provocation for the act." Petitioner's Supplemental Proposed Points for Charge Nos. 69 and 70. On appeal, Petitioner, for the first time, claimed that the punitive damage award was excessive under the common law of Pennsylvania because it did not bear a reasonable relationship to the compensatory award.[11] The Superior Court rejected this argument because Petitioner had not raised it at trial or even in its motions for post-verdict relief.[12] A.65a

Following the jury's verdict, the trial judge filed an opinion denying Petitioner's motions for post-trial relief and in so doing stated:

> Furthermore, even the reference in the article to the small portion of the deposition of Robert Ciaffoni was hardly complete since the report did not point out that the statement of Ciaffoni in the deposition was circumscribed by the comment of his attorney that no

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[11] The present petition (Question Presented C, p.i.) restates Petitioner's proportionality argument but, for the first time, cites the Eighth and Fourteenth Amendments in support of that contention. See p. 13, *infra*.

[12] The trial judge instructed the jury that punitive damages did not have to bear a relationship to compensatory damages and Petitioner took no exception to that charge. The Superior Court held that because Petitioner failed to raise proportionality it could not use disproportionality as part of its argument that the punitive damage award was excessive. A.65-66a.

allegation regarding such intimacy was being made or relied upon by the contestants of the will . . . or that this allegation was not ever reported at trial. Given this, there is a question as to why the *Post-Gazette* selected this obscure passage of the deposition at all. A. 109a

* * *

Indeed, it struck the Court as this testimony came in . . . that it was not truly the primary or secondary purpose of the *Post-Gazette* to fairly and accurately synthesize the proceedings in Washington County. The article reads more like the rendering of an emotional forum for Robert Ciaffoni to describe the impact of a controversy on his family. This purpose did not, however, relieve the *Post-Gazette* of its obligation to fairly abridge the proceedings which had occurred many months before the article was printed. By unfairly highlighting a minuscule part of these proceedings and mis-characterizing it to suggest that it had been a serious charge, the jury was properly allowed to draw the conclusion that the Fair Comment privilege had been abridged. A. 110a

* * *

It is not simply that the article prepared by the *Post-Gazette* was replete with inaccuracies; it was more that the editors in charge of the preparation of the article found it necessary to insert an unfounded and sensational element to fill a "hole" in the story. Rather than reporting accurately that this "hole" was not even of prime consideration to counsel for the contestants, the *Post-Gazette* highlighted it in such a way as to leave the natural impression on the part of the reader that a serious question of Mr. DiSalle's competence and integrity had been entertained in a court of law. A. 112-13a.

* * *

This article was not the report of a fast-breaking news story in which time for reflection and thought on the part of the newspaper was out-weighed by the need to

quickly and properly report the essence of the facts to the public. This article had been prepared over a substantial period of time and the selection of the material to be placed in the article was done with direction and pre-meditation by the officials of the newspaper. The article itself was not an attempt to dispassionately report on a legal proceeding in Washington County, Rather, it sought the more sensational angle of the family's turmoil and, to further enhance reader interest, injected the notion that a respected and responsible lawyer acted with gross impropriety in conduct striking at the very heart of his personal and professional reputation. The *Post-Gazette* did not seek the fair and accurate reporting of these events; it sought melodrama. A. 115-16a.

The Superior Court of Pennsylvania, in affirming the verdicts, responded similarly:

> Rather, in light of all that has been discussed, it is apparent that the jury was reacting to the grossly cavalier attitude towards the sensitivities and reputation of a prominent member of the community by a major publishing force in the region. A. 71a
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> * * *
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> Actual malice, though not without its detractors, has served its purpose by according protection only to those who do not publish with knowledge of or intentional blindness to the truth, and therefore whose actions serve the objectives of robust debate. All others, who act in disregard for the truth and therefore contribute nothing, are properly forced to take their chances in the same free marketplace of ideas which they have sought to abuse. The facts of this case do not recommend to us the need to lessen the risks taken by the latter category of defendants. A.73a

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REASONS FOR REFUSAL OF THE WRIT

Even Petitioner's formulation of the neutral reportage doctrine requires that a publisher must be both accurate

and disinterested. As abundantly proved at trial and as the trial judge noted, Petitioner's accusations against Richard DiSalle were neither accurate nor disinterested. On the contrary, Petitioner, in rewriting the first draft of its own reporter's story, distorted the facts so as to target Judge DiSalle, and, in so doing, both espoused and concurred in the charges made against him. Therefore, even if neutral reportage were a constitutional doctrine, it would have no applicability to the facts of the present case, either under Petitioner's formulation or under the formulation of any court or commentator.

The punitive damage award, appropriately based upon Petitioner's actual malice and its common law malice (outrageous conduct)[13] and upheld by the Pennsylvania courts as not being excessive, is not subject to constitutional attack because Petitioner's present due process argument was never raised before those Pennsylvania courts which considered the merits of Petitioner's appeal from the jury verdicts. As a result, Petitioner never gave the Pennsylvania courts an opportunity to consider whether the Eighth or Fourteenth Amendments imposed any restriction on the amount of the punitive damage verdict.

A. NEUTRAL REPORTAGE IS NOT APPLICABLE TO THE FACTS OF THIS CASE.

Although not contending that there was insufficient evidence for the jury to have found that Petitioner acted

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[13] Contrary to what Petitioner now states (Petition, p. 6), it was Petitioner itself that specifically asked the trial judge to charge that "punitive damages may be awarded for conduct that is outrageous because of the defendant's evil motive or [its] reckless indifference." Petitioner's Supplemental Proposed Point for Charge No. 65.

with actual malice in the publication of its article about Richard DiSalle, Petitioner claims that it is entitled to an additional protection, beyond actual malice, by virtue of the neutral reportage doctrine. However, in presenting its question to this Court (Question Presented A, p. i). Petitioner acknowledges that neutral reportage requires that the publisher make an "accurate and disinterested report of statements about alleged misconduct by a public official."[14] As the record clearly shows, Petitioner's statements about DiSalle were not only inaccurate, they were far from disinterested. In fact, Petitioner has conceded that there was sufficient evidence for the jury to have concluded that, in reporting on the will contest proceeding, Petitioner abused the common law fair comment privilege by being both unfair and inaccurate.[15]

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[14] None of the cases cited by Petitioner in which neutral reportage has been discussed has involved the report of a judicial proceeding. Publishers have always been protected in reporting upon court cases by the common law fair comment privilege, and, since 1964, by the actual malice doctrine. Neutral reportage was formulated by some courts and commentators to cover situations where statements have been made about newsworthy events which have not involved court proceedings. Respondents suggest that, in the cases cited by Petitioner, the actual malice rule was sufficient protection. See, e.g., *Edwards v. National Audubon Society, Inc.*, 566 F.2d 113, 120, *cert. denied* 434 U.S. 1002 (1977) ("Even absent the special protection afforded to neutral reportage . . . the evidence adduced at trial was manifestly insufficient to demonstrate 'actual malice' on the part of the *Times*.")

[15] In appealing from the verdicts, Petitioner did not claim that its article was an accurate and disinterested report of the Ciaffoni will contest proceeding. Rather, Petitioner specifically told the Pennsylvania Superior Court that the "article constituted a rational interpretation of the allegations and assertions of the *contestants* of the will" (Brief in the Superior Court, p. 11 (emphasis added)); and told the Pennsylvania Supreme Court that

(Continued on following page)

Petitioner's inaccuracy and its espousal of Robert Ciaffoni's false accusations, were demonstrated at trial in many ways: Petitioner identified pages of the will as being "doctored" even though Ciaffoni himself did not use this word; Petitioner deleted from the article the statement that document examiners chosen by the contestants had concluded that the will was authentic; Petitioner selected the quotation about the alleged meretricious relationship from a deposition transcript in which Ciaffoni stated in answers to other questions that "I didn't find nothing" and "I don't say that, I don't know that", and in which his lawyer stated "we don't purport to prove" any such allegation; and Petitioner edited the first draft so as to target DiSalle, turning the article into what was known by Petitioner's own staff as "the DiSalle story." Therefore, even leaving aside Petitioner's other knowledge (including knowing that Robert Ciaffoni had been identified as a liar and had lied to Petitioner's own reporter), by crafting the story as it did Petitioner both espoused and concurred in the charges made by Ciaffoni and, in addition, deliberately distorted the statements which Ciaffoni made to launch a personal attack of its own on a public official. *Edwards v. National Audubon Society,* 556 F.2d 113, 120 (2d Cir.), *cert. denied* 434 U.S. 1002 (1977); *Goldwater v. Ginzburg,* 414 F.2d

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the "article captured the essence of the *contestants'* claims" (Petition for Allowance of Appeal to the Pennsylvania Supreme Court, p. 9 (emphasis added)). In other words, Petitioner's interpretation of neutral reportage was that it could write a story about a small portion of an entire proceeding or event, and this would be constitutionally protected. Petitioner has particularly applied this argument to the sexual intimacy quotation which it extracted, out of context, from Robert Ciaffoni's deposition, ignoring the contrary statements of both Ciaffoni and his lawyer, in the same deposition, which were exculpatory as to DiSalle.

324, 337 (2d Cir. 1969); *Cianci v. New Time Publishing Co.*, 639 F.2d 54, 68-70 (2d Cir. 1980).

As Petitioner has admitted, courts and commentators have disagreed on what neutral reportage means and whether there is any formulation which should have a constitutional basis.[16] But it is clear that the facts presented at trial, facts which Petitioner does not dispute, demonstrate that Petitioner's attack on Richard DiSalle was far from neutral and created a sting more painful than Robert Ciaffoni's own accusations.

B. PETITIONER HAS WAIVED ANY CONSTITUTIONAL OBJECTION TO THE PUNITIVE DAMAGE AWARD.

In presenting its question to this Court concerning the punitive damage award (Question Presented C, p.i), Petitioner has raised the contention that it was deprived of due process of law because the amount of punitive damages awarded to a public official was ten times the amount of the compensatory award, citing *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, No. 88-556, *cert. granted* December 5, 1988, 57 U.S.L.W. 3390, a case involving the excessive fines clause of the Eighth Amendment. However, Petitioner has not identified for this Court where in the record of this case, at trial or on appeal, it raised any Eighth or Fourteenth Amendment objections to the punitive damage award.[17]

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[16] In its opinion, the Pennsylvania Superior Court theorized that neutral reportage, might, in the proper case, have merit, but it made no holding in this regard and its comments were dicta. A.21-41a.

[17] At no point has Petitioner complied with Supreme Court Rule 21.1(h).

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In fact, Petitioner raised no due process or excessive fines objections in its post-trial motions or in its briefs to the trial court or the Pennsylvania Superior Court. As noted previously, at trial Petitioner not only did not raise the issue of proportionality between the punitive and compensatory awards but made no objection to the court's charge that proportionality was not required. In addition, Petitioner specifically asked the trial judge to instruct the jury that the amount of the punitive damage award was solely in the jury's discretion. And after the verdicts were rendered, Petitioner failed to raise any proportionality argument in its motions for post-trial relief. Petitioner's principal contention was that the punitive damage award was excessive under Pennsylvania common law, an argument that the Pennsylvania courts rejected after reviewing the entire trial record. A. 66-71a; 111-16a.

As a result of Petitioner's failure to raise constitutional issues, the Pennsylvania courts had no opportunity to pass on the applicability of the due process or excessive fines provisions of the United States Constitution. Petitioner has clearly waived the only argument which it now makes against the award of punitive damages. *See, e.g., Bankers Life and Casualty Co. v. Crenshaw,* 486 U.S. —, 108 S.Ct. 1645 (1988).

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Petitioner states that the Superior Court "divided" on the constitutionality of punitive damages (Petition, p. 9). This is misleading. The dissenting judge did not contend that punitive damages were unconstitutional. His objection, raised *sua sponte,* was that due process required that the evidence of punitive damages be bifurcated from the evidence of compensatory damages. A. 82-83a. This contention was not raised by Petitioner at any stage of this litigation and is not raised in the present petition.

Although Petitioner does not raise a First Amendment issue in the questions it has presented to this Court for review, it should be noted that the Superior Court analyzed the punitive damage issue in light of *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).[18] The Court properly held that *Gertz* did not prohibit punitive damage awards, only that such damages required proof of actual malice.[19] As previously stated, Petitioner does not dispute the sufficiency of the evidence which permitted the jury to conclude that, in publishing its article, Petitioner had acted with both actual malice and common law malice.

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[18] At trial, Petitioner did not claim that *Gertz* was an absolute bar to punitive damages, only asking that the judge charge the jury that "imposing punitive damages in an improper case, or imposing excessive damages upon the Defendant in a proper case, would pose a threat to the legitimate interests of freedom of speech and of the press which are protected by our Federal Constitution." Petitioner's Supplemental Proposed Point for Charge No. 71.

[19] On remand, Gertz received an award of both compensatory and punitive damages. *Gertz v. Robert Welch, Inc.*, 680 F.2d 527 (7th Cir. 1982), *cert. denied* 459 U.S. 1226 (1983).

CONCLUSION

For the foregoing reasons, it is submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted

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APPENDIX

IN THE COURT OF COMMON PLEAS OF
WASHINGTON COUNTY, PENNSYLVANIA

CIVIL ACTION — LAW

RICHARD DiSALLE and JOAN DiSALLE, his wife,	)	
Plaintiffs	)	
vs.	)	NO. 367
	)	Sept. Term 1979
PG PUBLISHING COMPANY, trading as the PITTSBURGH POST-GAZETTE, a corporation,	)	
Defendant	)	

COMPLAINT IN TRESPASS
FIRST COUNT

RICHARD DiSALLE, Plaintiff, vs. PG PUBLISHING COMPANY, trading as the PITTSBURGH POST-GAZETTE, a corporation, Defendant.

1. RICHARD DiSALLE, Plaintiff herein, is a resident of Washington County, Pennsylvania.

2. JOAN DiSALLE, the other Plaintiff herein, is a resident of Washington County, Pennsylvania, and is the wife of Plaintiff, Richard DiSalle.

3. PG PUBLISHING COMPANY, trading as the PITTSBURGH POST-GAZETTE, Defendant herein, is a corporation chartered and existing under the laws of the Commonwealth of Pennsylvania, with a principle place of business in the City of Pittsburgh.

4. At all times relevant to the matters set forth in this Complaint, Defendant owned and published a certain

daily newspaper of general circulation known as the "Pittsburgh Post-Gazette," said newspaper being published and circulated in Washington County and in other counties of Western Pennsylvania, and also being published and circulated in other areas of Pennsylvania and in other places in the United States and throughout the world.

5. On September 10, 1979, the daily edition of the Pittsburgh Post-Gazette was published and was circulated to readers in Washington County and in the other areas of the Post-Gazette's circulation as described in the preceeding paragraph.

6. On page 2 of the Post-Gazette's edition of September 10, 1979 there appeared an article headlined "FEUD HEATS IN FAMILY'S BATTLE FOR $8 MILLION INHERITANCE." A copy of said article is attached hereto, incorporated herein and marked Exhibit "A" and may hereafter be designated as the "Article."

7. The said Article purported to describe the legal contest involving the estate of Paul Ciaffoni, deceased, and in the Article Defendant referred to various sources for its information, including Robert Ciaffoni, a son of the decedent and one of the contestants of decedent's 1968 will.

8. A fair reading of the said Article by recipients of the Article discloses that Defendant published the following statements with reference to Plaintiff, Richard DiSalle:

(a) That in 1968 and thereafter Plaintiff was a lawyer;

(b) That in 1968, in his capacity as a lawyer, Plaintiff allegedly drafted a will for Paul Ciaffoni, a Washington County millionaire who died in 1974;

(c) That the will, by reason of the fraud of Plaintiff, Richard DiSalle, acting either alone or in conspiracy with others, was falsified so as to benefit one of Paul Ciaffoni's children, to-wit, Elizabeth Cowden, to the detriment of other members of the family;

(d) That pages of the will, before and after the page leaving the said Elizabeth Cowden her legacy, were "doctored" so as to permit the insertion of the legacy to her;

(e) That the second page of the will was "controversial" and that an examination of the will by an inspector for the United States Postal Service concluded that the said page was "inconsistent" with the other pages of the will;

(f) That the falsification of the will was demonstrated by the fact that two pages of the will ended with a period at the conclusion of a complete sentence, whereas Plaintiff, in order to prevent alterations of a will, had never allowed other wills which he drafted to have pages ending in such a manner;

(g) That the fraud and falsification in which Plaintiff participated was based in part upon an illicit and/or improper relationship between Plaintiff and the said Elizabeth Cowden;

(h) That, when questioned by one of Defendant's reporters during an interview with reference to the two pages of the will ending with a period, Plaintiff refused to comment;

(i) That in a will contest proceeding in the Court of Common Pleas of Washington County, Judge Keim, presiding over the trial, "ruled as inadmissible claims by experts hired by the contestants that portions of the will were altered";

(j) That in the will contest proceeding Judge Keim upheld the authenticity of the will but as of the date of the Article, to-wit, September 10, 1979, Judge Keim had reserved the right to change his decision pending the filing of briefs for each side;

(k) That in the 1968 will, one of Paul Ciaffoni's daughters, Margaret Soverio, received nothing but under a prior will of 1965 had received 500 acres of land in North Fayette Township;

(l) That the 1965 will was the one which the proponents in the will contest proceeding claim is their father's real will.

9. The statements contained in Defendant's Article, as set forth in subsections (c) through (l) of paragraph 8 above, were substantially false and untrue in the following particulars, inter alia:

(a) Plaintiff, Richard DiSalle, a lawyer, at the request of Paul Ciaffoni, drafted a will in 1968;

(b) Contrary to Defendant's statements as to fraud and falsification, the will was typed by the secretary in Plaintiff's law office and, following the typing of the will, was executed by Paul Ciaffoni and was properly witnessed by three disinterested witnesses (none of whom was to receive anything under the will). The will as executed and

witnessed was immediately delivered to the possession of Paul Ciaffoni, Plaintiff retaining two carbon copies of the typewritten will;

(c) Also contrary to Defendant's statements as to fraud and falsification, the provisions of the will were provisions specifically requested by Paul Ciaffoni and were incorporated into the will as typewritten at his request;

(d) Contrary to Defendant's statement as to the exclusion of Margaret Soviero, a daughter, from Paul Ciaffoni's 1968 will as opposed to the bequest to her in the 1965 will, Margaret Soviero was excluded at Paul Ciaffoni's specific direction. The bequest in the 1965 will was only for a life estate in the farm surface of 500 acres of ground in North Fayette Township and not a bequest of a fee interest in the 500 acres;

(e) Contrary to Defendant's statement as to Plaintiff's relationship with Elizabeth Cowden, neither at the time that the 1968 will was drafted nor at any other time did Plaintiff have any improper or illicit relationship with Elizabeth Cowden. In fact, in the will contest trial before Judge Keim in the Court of Common Pleas of Washington County, the contestants of the 1968 will made no offer to prove that any improper or illicit relationship existed between Plaintiff and Elizabeth Cowden at any time. Moreover, while Plaintiff was on the witness stand for two days in said proceeding, no questions were even asked of him by the attorney for contestants as to any relationship between him and Elizabeth Cowden;

(f) Also contrary to Defendant's statements as to fraud and falsification, following Paul Ciaffoni's execution

of the will and its immediate delivery to Paul Ciaffoni's custody, Plaintiff never again saw the will nor heard anything further about the will until after the will was probated;

(g) Also contrary to Defendant's statements about fraud and falsification, Plaintiff at no time participated in any changes, insertions or alterations in or to the will following its execution and, in fact, the will as probated is in the same form as it was when executed by Paul Ciaffoni in 1968. Moreover, during the will contest trial before Judge Keim, the contestants offered no evidence tending to show that Plaintiff changed or altered the will in any way.

(h) Contrary to Defendant's statement about the findings of the inspector of the United States Postal Service who examined the will, the inspector in fact concluded that there was no "significant evidence that would tend to challenge the collective authenticity" of the pages of the original 1968 will and the two typed copies. At the will contest trial in the Court of Common Pleas of Washington County, the contestants made no offer whatsoever to call the United States Postal Service inspector as a witness nor did they even make any offer to have his report admitted into evidence. The report of the inspector merely pointed to the fact that page 2 of the will, which page contained no dispositive provisions with reference to Elizabeth Cowden and therefore was not a "controversial" page, was typed on a paper of different manufacture than the other pages of the will;

(i) Also contrary to Defendant's statements as to fraud and falsification, the persons contesting the 1968 will of Paul Ciaffoni retained Ordway Hilton, a world re-

nowned document examiner, to examine the 1968 will, and the said Ordway Hilton prepared an extensive report, in which report he concluded that the will was not altered or falsified in any way and that the carbon copies of the will retained by Plaintiff were, in fact, actual carbon copies of the original will signed by Paul Ciaffoni and probated following his death. Following the submission of his report, the contestants fired Hilton and he thereafter was appointed as the court's expert by Judge Simmons of the Court of Common Pleas of Washington County and his report then became a part of the court papers in the will contest proceeding in the Court of Common Pleas of Washington County;

(j) Contrary to Defendant's statement as to Judge Keim's rulings on the admissibility of claims by contestants' experts during the will contest trial, not only did Judge Keim not rule as inadmissible claims by experts hired by the contestants that portions of the will were altered but at said trial the contestants did not even offer any evidence whatsoever tending to show any such alterations, making a ruling by Judge Keim unnecessary;

(k) Contrary to Defendant's statement as to Plaintiff's practice of not ending pages of wills with a period, Plaintiff in his law practice had no such rule or practice;

(l) Contrary to Defendant's statement that pages of the will were "doctored," at the will contest trial in the Court of Common Pleas of Washington County, no evidence was offered by the contestants tending to show that any portion of the will was "doctored" nor, in fact, does any such evidence exist;

(m) Contrary to Defendant's statement as to the status of Judge Keim's decision, although Judge Keim could have changed his decision in considering the exceptions filed by the contestants to his dismissal of the will contest, Judge Keim, in fact, on August 27, 1979, filed an opinion dismissing the exceptions and upholding the 1968 will. This decision was therefore filed approximately two weeks prior to Defendant's Article appearing in Defendant's paper;

(n) Contrary to Defendant's statement that the proponents of the will contended that the 1965 will was Paul Ciaffoni's real will, the 1965 will was not the one which the proponents claimed was the real will of Paul Ciaffoni. Rather the proponents claimed and continue to claim that the 1968 will is his real will;

(o) Contrary to Defendant's statement that Plaintiff refused to comment to Defendant, at no time was Plaintiff, Richard DiSalle, questioned or attempted to be questioned, or interviewed or attempted to be interviewed, by Thomas J. Porter, Jr. who wrote Defendant's September 10, 1979 Article. However, in April, 1979, Plaintiff was interviewed by another reporter of Defendant, David Leherr, in connection with another matter. During that interview the said David Leherr questioned Plaintiff about the Ciaffoni case and not only did Plaintiff not refuse to comment but Plaintiff answered each and every question put to him by Leherr about matters involving the Ciaffoni estate and told the said reporter, inter alia:

(1) That in a document filed in the will contest proceeding Judge Paul A. Simmons (who at the time was presiding judge of the Orphans Court Division of the Court of Common Pleas of Washington County, and who is now a

judge of the United States District Court for the Western District of Pennsylvania) had stated that Robert Ciaffoni had at first refused to act as co-executor of the estate of his father, Paul Ciaffoni, because he claimed that the 1968 will was fraudulent; that he later petitioned the court to allow him to act as co-executor and was permitted to do so on his representation to the court that he would never at any time in the future contest the will or claim that it was fraudulent; and that despite his representations Robert Ciaffoni did not keep his word to the court even though made under oath. Judge Simmons further stated that Robert Ciaffoni had lied to the court and the court had referred to Robert Ciaffoni as a liar. Plaintiff further told Leherr that following these statements by Judge Simmons, the contestants filed a petition in the Supreme Court of Pennsylvania to have Judge Simmons disqualified from hearing the case and the Supreme Court of Pennsylvania denied the petition;

(2) That the contestants had originally hired Ordway Hilton, a world renowned documents examiner, to examine the 1968 will and, when he advised the contestants that the will had not been tampered with or altered in any way, they fired him and that, thereupon, Judge Simmons appointed Ordway Hilton as the court's expert witness;

(3) That Ordway Hilton's report was on file with the court papers in Washington County;

(4) That the inspector of the United States Postal Service had concluded that there was no significant evidence that would tend to challenge the collective authenticity of the will;

(5) That, at the will contest trial in Washington County before Judge Keim, there was no offer of proof made by the contestants that any portion of the will had been altered or that there was any substitution of pages;

(6) That there was absolutely no truth to any allegation of an improper relationship between Plaintiff and Elizabeth Cowden and, in fact, no reference had been made to it at the will contest trial and Plaintiff, during two days on the witness stand, was asked absolutely no questions by contestants' attorney, directly or indirectly about the existence of any such relationship;

(7) That the deposition testimony of Robert Ciaffoni had not been admitted into evidence at the will contest trial;

(8) That the report of the inspector of the United States Postal Service had not been admitted into evidence at the will contest trial and no such offer had even been made;

(9) That if the Post-Gazette planned to do an article, they should come to Washington County and investigate the entire matter, including an examination of the court papers and documents and including determining the reputation of Robert Ciaffoni for truth and veracity; and

(10) That the attorney for the contestants had stated in a hearing before Judge Simmons on May 4, 1977, that Plaintiff's integrity was not being questioned.

10. Plaintiff's conduct as described in Defendant's Article would, if true, have subjected Plaintiff to prosecution for violation of various provisions of the Pennsyl-

vania criminal laws including obstruction of justice, falsification of records, and forgery. Defendant's Article, therefore, published statements accusing Plaintiff of having violated the criminal laws of the Commonwealth of Pennsylvania.

11. Plaintiff's conduct as described in Defendant's Article would, if true, have subjected Plaintiff to disciplinary action, including disbarment, for violation of the Code of Professional Responsibility applicable to lawyers in the Commonwealth of Pennsylvania by virtue of rules adopted by the Supreme Court of Pennsylvania. Defendant's Article, therefore, published statements accusing Plaintiff, as a lawyer, of having acted unethically.

12. At the time of the interview of Plaintiff by Defendant's reporter, David Leherr, as described in subsection (o) of paragraph 8 aforesaid, the said Leherr told Plaintiff that all of the information obtained by Leherr would be turned over to those employees of Defendant who were working on the story concerning the estate of Paul Ciaffoni, deceased, and the said Leherr assured Plaintiff that said matters would be fully investigated before any article on the case would be published.

13. Notwithstanding the statements and assurances made by Defendant's reporter, David Leherr, as described in paragraph 12 aforesaid, Defendant failed to investigate fully the matters involving the estate of Paul Ciaffoni, deceased, and, in particular, failed to investigate the pertinent portions of the court record in the will contest proceeding in the Court of Common Pleas of Washington County. As a result, Defendant's Article of September 10, 1979 was published and circulated by Defendant.

14. At all times relevant to the matters set forth herein, Thomas J. Porter, Jr., David Leherr, and all other persons having anything to do with the writing and publication of the Article of September 10, 1979, were the agents, servants and employees of Defendant and were acting in and upon Defendant's business, while in the course of their employment by Defendant, and while acting within the scope of their authority from Defendant.

15. Defendant's conduct in publishing and circulating the Article failed to meet the legal standards of accuracy and fairness in that it was edited and written so as to misrepresent the facts in general and the court proceedings in particular. Material appearing in the Article was so arranged and placed as to convey erroneous and misleading impressions to those reading the Article. Moreover, the Article was based substantially and significantly, if not in its entirety, on the statements, comments, observations and innuendos of Robert Ciaffoni, one of the litigants to the proceedings, without proper examination of and/or reporting upon impartial and disinterested sources such as the report of Ordway Hilton, the report of the inspector of the United States Postal Service, the actual evidence presented in the will contest trial, and the decisions and opinions of Judge Simmons and Judge Keim. In addition, Defendant failed to investigate and report upon Robert Ciaffoni's truth and veracity or lack of it as demonstrated by the court proceedings and his general reputation in the community. By reason of the foregoing, the Article as published and circulated collectively consisted of falsehoods, innuendos and misrepresentations, particularly with reference to Plaintiff, and constituted an extreme departure

from the standards of investigation and reporting ordinarily adhered to by responsible publishers.

16. At the time that Defendant published the Article, Defendant knew that the statements contained in the Article, as delineated in paragraph 8, subsections (c) through (l), aforesaid, were false and untrue.

17. In the alternative, Defendant published the said Article and the statements contained therein, with reckless disregard for the truth.

18. Defendant's conduct in publishing and circulating the Article was wilful, reckless, intentional and malicious and was published with intent to cause harm to Plaintiff.

19. As a result of the publication and circulation of the Article, Plaintiff, Richard DiSalle, has suffered the following injuries and damages:

(a) His good name and reputation have been defamed;

(b) He has been held up to odium, scorn and contempt;

(c) He has suffered embarrassment and humiliation;

(d) He has suffered emotional shock and trauma;

(e) His ability to earn a living has been impaired.

Some or all of the foregoing injuries and damages may continue into the future and some may be permanent.

20. By reason of Defendant's conduct, Defendant is liable to Plaintiff, Richard DiSalle, for general, special and compensatory damages.

21. By reason of Defendant's wilful, reckless, intentional and malicious conduct, Defendant is liable to Plaintiff, Richard DiSalle, for punitive damages in the sum of $6,500,000.

WHEREFORE, Plaintiff, Richard DiSalle, claims general, special and compensatory damages from Defendant in a sum in excess of $10,000 and claims punitive damages against Defendant in the sum of $6,500,000. Jury trial is demanded.

SECOND COUNT

JOAN DiSALLE, Plaintiff, vs. PG PUBLISHING COMPANY, trading as the PITTSBURGH POST-GAZETTE, a corporation, Defendant.

22. Plaintiff incorporates by reference and makes a part of this Count all of the paragraphs of the First Count of this Complaint.

23. By reason of the conduct of Defendant and its effect upon Plaintiff, Richard DiSalle, Plaintiff Joan DiSalle, his wife, may suffer the loss of the consortium, services, society, companionship, comfort and support of her husband.

WHEREFORE, Plaintiff, Joan DiSalle, claims general, special and compensatory damages against Defendant in a sum in excess of $10,000 and claims punitive damages against Defendant in the sum of $250,000. Jury trial is demanded.

THIRD COUNT

RICHARD DiSALLE, Plaintiff, vs. PG PUBLISHING COMPANY, trading as the PITTSBURGH POST-GAZETTE, a corporation, Defendant.

24. Plaintiff incorporates by reference and makes a part of this Count all of the paragraphs of the First Count of this Complaint.

25. The conduct of Defendant in publishing and circulating the Article was extreme and outrageous, and intentionally or recklessly caused Plaintiff, Richard DiSalle, to suffer severe emotional distress.

26. By reason of the foregoing, Defendant is liable to Plaintiff, Richard DiSalle, for the severe emotional distress suffered by him.

WHEREFORE, Plaintiff claims general, special and compensatory damages against Defendant in a sum in excess of $10,000 and claims punitive damages against Defendant in the sum of $1,500,000. Jury trial is demanded.

FOURTH COUNT

JOAN DiSALLE, Plaintiff, vs. PG PUBLISHING COMPANY, trading as the PITTSBURGH POST-GAZETTE, a corporation, Defendant.

27. Plaintiff incorporates by reference and makes a part of this Count all of the paragraphs in the First Count of this Complaint.

28. The conduct of Defendant in publishing and circulating the Article was extreme and outrageous and intentionally or recklessly caused Plaintiff, Joan DiSalle, to suffer severe emotional distress.

29. By reason of the foregoing, Defendant is liable to Plaintiff, Joan DiSalle, for the severe emotional distress suffered by her.

WHEREFORE, Plaintiff claims general, special and compensatory damages against Defendant in a sum in excess of $10,000 and claims punitive damages against Defendant in the sum of $500,000. Jury trial is demanded.

BERGER, KAPETAN, MALAKOFF
& MEYERS

/s/ By Daniel M. Berger
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION-LAW

RICHARD DiSALLE and JOAN DiSALLE, his wife, Plaintiffs,	)	No. 367
vs.	)	September Term,
PG PUBLISHING COMPANY, trading as the PITTSBURGH POST-GAZETTE, a corporation, Defendant.	)	1971 A.D.

ANSWER AND NEW MATTER

Defendant PG Publishing Company, by its attorneys, EGLER & REINSTADTLER, hereby filed the following Answer and New Matter:

ANSWER

Defendant is advised that no response to the allegations of plaintiffs' Complaint in Trespass is required but that pursuant to Rule 1045, Pennsylvania Rules of Civil Procedure, all of said allegations are deemed denied and strict proof thereof is required at the time of trial.

NEW MATTER

1. The newspaper article which contains the allegedly libelous statements described in plaintiffs' Complaint is a fair and accurate report of judicial proceedings.

2. The newspaper article described in plaintiffs' Complaint was published without actual knowledge of any falsity contained therein and without serious doubt as to the truth of the statements contained therein.

3. The newspaper article described in plaintiffs' Complaint was published in order to inform the public concerning the judicial proceedings described therein and not solely for the purpose of causing harm to the plaintiff.

4. The publication of the allegedly libelous statements is priviledged under applicable Pennsylvania law.

5. At the time of the allegedly libelous publication, the plaintiff was a Judge of the Commonwealth of Pennsylvania and as such was both a public official and a public figure.

6. The publication of the allegedly libelous statements is protected by the First Amendment of the United States Constitution.

7. The allegedly libelous material involves exclusively statements summarizing the contentions of parties to a judicial proceeding which statements are true and accurate.

8. The plaintiff has sustained no special damages as a result of the allegedly libelous publication.

9. Plaintiff has not been disbarred.

10. Plaintiff has not been subjected to criminal prosecution.

11. Plaintiff has not been subjected to any disciplinary proceeding nor has the plaintiff been sanctioned for violation of the Code of Professional Responsibility.

EGLER & REINSTADTLER
BY: /s/ Avrum Levicoff
ATTORNEYS FOR PG
PUBLISHING COMPANY